IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 826 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA : Sd/-

HONOURABLE MR.JUSTICE KS JHAVERI : Sd/-

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GULABBHAI BABUBHAI BHOI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MR K RAMAKRISHNAN for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellant-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 31.07.1998 passed by the learned Additional Sessions Judge, Surat whereby he was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo one month S.I. for the charge under Section 302 of the Indian Penal Code. The accused was given the benefit of set-off.

2. Initially, this appeal was handed over to learned counsel Mrs.R.V. Acharya through Legal Aid. However, record shows that recently, before few days, she has returned back the matter to the Legal Aid. Therefore, we have requested learned counsel, Mr.G. Ramakrishnan, to render his services as an amicus curiae on behalf of the appellant in

the matter. He has conceded to our request.

3. The case of the prosecution in short is that on 02.10.1996 at about 22:45 p.m., the victim, his wife, Sangita and his brother, Gulabbhai (the present appellant-accused) were sitting in the house for taking dinner while mother of the victim, Yamunaben was sitting in the ossari. At that time, the appellant-accused raised objection as to why he has given less food and also used abusive language. Since the victim asked for pardon, the appellant-accused got excited and gave two knife blows on the right waist of the victim and left the scene of offence. On raising screams, the persons from the surrounding area reached the scene of offence and took the victim to hospital, where he was declared dead. Accordingly, the complainant (P.W.No.1, Panditbhai Babubhai Chanavala, Exh.7) lodged the complaint with Rander Police Station, which came to be registered as Rander Police Station I-C.R.No.305/1996 for the offence under Section 307, 504 etc.

of the Indian Penal Code. As stated above, on the same night, as the victim succumbed to the injuries, Section 302 of the IPC was added and, thereafter, investigation was entrusted to Police Inspector, Mr.M.G. Vaghela. He went to the Hospital and called panchas for preparing inquest panchnama and accordingly, inquest panchnama was drawn. Thereafter, he also filled up Maranottar Form and made arrangements to send the dead body for postmortem along with the Maranottar Form, inquest panchnama and yadi. Simultaneously, he also went to the scene of offence and drew the scene of offence panchnama in the presence of panchas. He also recorded the statements of various witnesses and arrested the appellant-accused. He also sent muddamal to FSL along with forwarding letter and also collected the postmortem report from the LG Hospital. On receiving the FSL and postmortem reports, same were kept along with the investigation file. Upon completion of investigation, he submitted the

charge sheet against the appellant-accused before the learned Chief Judicial Magistrate, Surat.

4. As the offence alleged against the accused was exclusively triable by Court of Sessions, learned Chief Judicial Magistrate committed the case to the Court of Sessions, Surat and it was numbered as Criminal Case No.298 of 1997 and it was allotted to learned Additional Sessions Judge for disposing of on merits. Learned Addl. Sessions Judge framed charge against the accused at Ex.4. Charge was read over and explained to the accused. The accused pleaded not guilty to the charge and prayed for trial.

5. To prove the charge against the accused, prosecution examined, in all, 17 witnesses and also placed reliance upon documentary evidence numbering 16.

6. On submission of closing purshis by the prosecution, learned Additional Sessions Judge recorded further statement of the accused under Sec.313 of Cr.P.C. qua the

incriminating question wherein the accused came out with the case of total denial. The accused did not examine any witness nor stepped into the witness box. Therefore, after hearing the learned counsel appearing for the respective parties, learned Addl. Sessions Judge delivered the impugned judgment giving rise to prefer the present appeal.

7. We have heard learned counsel, Mr.G.Ramakrishnan for the appellant-accused and learned Additional Public Prosecutor, Mr. H.L. Jani for the State. We have been taken through the record and proceedings by the learned counsel for the respective parties.

8. Learned counsel for the appellant, Mr.Ramakrishnana has taken us through the oral evidence of three material witnesses i.e. P.W.No.1 viz., Panditbhai Babubhai Chanavala, Exh.7, who reached the scene of offence and lodged the complaint at the earliest, P.W.No.4 viz., Sangitaben Shantaram, Exh.21, who is wife of the

complainant and the witness of incident as the incident has taken place in front of her eyes and P.W.No.8 viz., Prakashbhai Babubhai at Exh.28, who is brother of the victim as well as appellant-accused. He has also taken us through the oral evidence of P.W.No.10 viz., Dr.Mahammad Iqbal Hussain Kureshi at Exh.34 Through him, the prosecution has proved the injury, P.M.Note, cause of death etc. He has taken us through the evidence of P.W.No.17 viz., Dr.Saurabh Himmatbhai Jodhani at Exh.51, who has given preliminary treatment to the deceased.

9. He has also taken us through the panchnama of scene of offence, inquest panchnama, complaint etc. and argued that out of above three witnesses, only P.W.No.4, Sangita is the eye witness as she was there at the time of incident and rest of three are not the witnesses of incident as they reached there after hearing the shout for help. He has concentrated his arguments upon the evidence of P.W.No.4 and argued that she is an

interested witness as she is the wife of the victim and, therefore, her evidence is required more scrutiny and also corroboration.

10. It is also argued that it is true that it is a case of homicidal death, but according to him, there is only one blow, which is on on the vital part of the body. According to him, the incident took place due to sudden provocation and, therefore, it cannot be said to be an offence of 302 of the IPC in any circumstances of the matter. Lastly, it has been argued that sufficient time has been passed and he has undergone more than 10 years of imprisonment and, therefore also, same may be taken into consideration.

11. Mr.H.L. Jani, learned Additional Public Prosecutor, who appears on behalf of the respondent-State has taken us through the reasoning part of the learned Additional Sessions Judge. He submitted that no interference is called for as the prosecution has established the case against the

appellant-accused beyond doubt. He has submitted that it is not a case of sudden provocation because no opportunity has been given by the appellant-accused to provoke him. Over and above, he has argued that after the discussion, he stood up, took knife, gave blow and left the scene of offence. It is also argued that it is true that Sangita is the wife of the deceased, but merely because she is widow of the deceased and nearest relative of the deceased, her evidence cannot be discarded or can be given less weightage as her evidence is scrutinized in a proper way keeping in mind the above aspect of the matter. It is argued that there are other three witnesses, who reached the scene of offence immediately within a minute or two. Not only that, it is argued that the mother of the deceased was sitting in the ossari and distance between the house and ossari is 5-6 feet and, therefore, according to him, the mother is also witness of incident. It is argued that other two witnesses reached the

scene of offence when they saw the appellant-accused leaving the scene of offence and, therefore, it is argued that his conduct is also connecting him with the crime in question, wherein the victim has been killed by the appellant-accused and as a result of that, P.W.no.4 has lost her husband, their children has lost father and mother has lost her son and, therefore, no sympathy should be shown to him. Mr.Jani has, therefore, submitted that the learned trial Judge was perfectly justified in coming to the conclusion that the appellant-accused has committed the crime. Raising the abovesaid contentions, Mr.Jani has urged that the present appeal deserves to be dismissed.

12. We have gone through the oral as well as documentary evidence and the reasoned judgment delivered by the Court below shown to us by the learned counsel for the respective parties.

13. It is required to be noted that in this incident, only eye witness is the wife of the

deceased i.e. Sangitaben (P.W.No.4, Exh.21).

14. We have gone through her evidence in detail and she supports the say of the prosecution. She has been thoroughly cross-examined by the learned counsel for the other side in the Court below, but nothing contrary has been come out which shake her evidence. It is required to be kept in mind that she is the widow of the deceased and, therefore, according to the prosecution, she is an interested witness. The law on this point is well settled. Merely because the witness is the relative of the deceased, her evidence may not be discarded at all. What is required to be done is to evaluate her evidence with detailed scrutiny and, thereafter, if the Court comes to a conclusion that her evidence appears to be a trustworthy and free from doubt, Court can certainly rely upon the same and base conviction only on the basis of interested witness.

15. Here in this case, we have gone through the evidence of Sangitaben and we are of the

opinion that her evidence is trustworthy and free from doubt and reliable. Over and above, we have also come to a conclusion that the incident in question has been taken place at 10:45 p.m. and that too also, in the room of the deceased as well as appellant-accused and, therefore, Sangitaben being wife of the deceased at late night hours, her presence is natural one. Not only that, her presence has not been denied by the other side. Over and above, as per say of the prosecution, at that time of incident, she was giving food to the deceased as well as appellant-accused and that part is also remained unchallenged. In short, her presence has been established and as per panchnama, Exh.46, it is also established that the size of the room is very small having one osari and, therefore, the appellant-accused being her husband's younger brother, question of misidentification may not be arisen at all. Not only that, she has also seen the incident and at the earliest, narrated the same by way of Police statement.

Not only that, on hearing shout for help, the mother of the deceased as well as appellant-accused, who was sitting in the osari attached to the room has also seen the incident. At that time, P.W.No.1-Panditbhai Babubhai and P.W.No.8-Prakashbhai Babubhai were also sitting there and on hearing shouts for help, they came to rescue. There are evidence on record of above three witnesses that they have seen the appellant-accused coming out of the house and tried to run away from the place of offence. So presence of the appellant has been established at the time of incident from the above referred witnesses, which takes the appellant-accused very near to the crime in question.

16. Even if he is the assailant, then also, in the normal circumstances, when his brother has received severe injuries, he would not have left the place, but would have remained there itself for giving better treatment so that he can survive. Such conduct of the appellant also takes him very near to the

crime.

17. As discussed above, the wife of the deceased, Sangitben also gets support from above referred three witnesses. Over and above, knife seized from the scene of offence also bears the blood group of the deceased, which is of group 'B' and the prosecution has proved that the deceased was having blood group 'B'.

18. Even panchnama of scene of offence also proved that the incident has taken place in the house of the deceased itself and same has been established beyond reasonable doubt. Over and above, it is required to be noted that the appellant was arrested after considerable time and, therefore, obviously, when he was arrested, nothing can be taken from his custody or from his clothes etc., more particularly, while escaping from the scene of offence, he threw away the knife, which was seized from the scene of offence.

19. We have also considered the case on the aspect of sudden provocation and have also

gone through the evidence to that effect and we are of the opinion that it is not a case of sudden provocation. The way in which the incident took place and the role played by the appellant after commission of offence is such which would not fall under the case of sudden provocation and, hence, we are unable to accept the arguments and contentions raised by the learned counsel for the appellant that it is a case of sudden provocation.

20. As far as homicidal death is concerned, the prosecution is able to prove the same by way of oral evidence of Dr.Mahammad Iqbal Hussain Kureshi, Exh.34, who has performed the postmortem on the dead body of the deceased on 03.10.1996. However, the learned counsel for the appellants-accused has not disputed the same and, therefore, we are not dealing with the same. Not only that, we have also gone through the reasoning part for the same which has been given by the Court below and we are of the opinion that it is a case of

homicidal death. Once it has been proved that it is a homicidal death then the role played by the appellant is to be seen. On going through the entire evidence on record, we are of the opinion that the prosecution is able to connect the appellant-accused with the crime in question, wherein he has killed his own brother and as a result of that, the widow lady has lost her husband, children their father and old mother his son. Therefore, the way in which the incident took place and looking to the seriousness of the offence and the part selected by the appellant-accused, it does not appear to be a a case of sudden provocation. Hence, case of the appellant cannot be considered for that angle also.

21. In view of the above, since there is no substance in any of the arguments advance by the learned counsel for the appellant-accused, this appeal is required to be dismissed.

22. The appeal is dismissed.

Sd/- *Sd/-*

(R.P.DHOLAKIA, J.) ***(K.S.JHAVERI, J.)***

/patil